

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JENNIFER H.,

Claimant,

v.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. N2006080548

DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on October 6, 2006.

Claimant Jennifer H. was represented by her father and authorized representative, Steven H. Claimant was not present.

Attorney Kristin N. Casey represented the service agency, North Bay Regional Center (NBRC).

The matter was submitted on October 6, 2006.

ISSUE

The issue in this case is whether NBRC should be required to fund all or part of claimant's attendance in the "Music in Careers" program at the Berkshire Hills Music Academy.

FACTUAL FINDINGS

1. The case arises from a fair hearing request filed on behalf of claimant on August 11, 2006. On October 6, 2006, before the hearing in this matter, the parties met and resolved two issues. Specifically, claimant and NBRC agreed that: NBRC will fund an Independent Living Skills (aka "ILS") assessment of claimant; and, NBRC will refer

claimant to the Department of Rehabilitation for a vocational evaluation. The remaining issue concerns the Berkshire Hills Music Academy “Music in Careers” program.

2. Claimant Jennifer H. was born on May 23, 1984, and is 22 years old. She has been diagnosed with moderate mental retardation. She is eligible for and receives services from NBRC.

3. Claimant is gifted in music. According to her July 20, 2005 Individual Program Plan (IPP):

[Claimant] has remarkable speaking skills, an intense interest in acting and has a demonstrated talent for music in general and singing in particular. These skills are dramatically disproportionate in comparison to her deficits. She has won numerous awards for her singing. She is regularly asked to perform by many organizations (Special Olympics, professional sports teams, veteran’s organizations and civic groups) and has, on occasion, made over \$100.00 per night singing for tips in a small local restaurant. [Claimant] understands that she requires further training in vocal technique to enhance and preserve her instrument as well as further training and support in basic life skills.

3. Claimant’s July 20, 2005 IPP notes that one of her long-range goals is to become a skilled musician and work as a singer and vocal artist.

4. Beginning September 11, 2004, claimant attended the Berkshire Hills Music Academy (BHMA) in South Hadley, Massachusetts. BHMA is a residential post-secondary school providing training in music, academics, social vocational and independent living skills. Claimant has completed two years, as well as some summer sessions, at BHMA. Her attendance at BHMA was funded by the Fairfield-Suisun School District, pursuant to a settlement of a special education claim by claimant. Claimant is no longer eligible for special education services.

5. Claimant received a certificate certifying her completion of BHMA’s two year program. She has been selected for attendance in an additional one year “Music in Careers” program at BHMA. Claimant urges that NBRC fund her attendance in the “Music in Careers” program.

6. BHMA describes the “Music in Careers” program as providing “intensive music career training and field experience, presenting students with an opportunity to live the lives of working musicians.” The program’s major goals are to improve performance skills, learn and practice skills to obtain employment in jobs with music content, and improve independent living skills.

7. NBRC's policy for purchase of services is set forth in Procedure Memo 2301, which provides that any service purchased by NBRC "must be related to a condition of the developmental disability." The memo further provides that the relationship can exist in either of two ways: first, where the developmental disability itself is the direct cause of the condition for which service is recommended; and, second, where the developmental disability is not the direct cause of the condition for which the service is recommended, but the absence of the service would result in a deterioration of the developmental disability. The record did not show that BHMA's "Music in Careers" meets either condition of relationship to her developmental disability. Instead, the record suggests that the program principally addresses claimant's musical gift, not her mental retardation.

8. NBRC's policy is not to pay for services available through other sources, such as the Department of Rehabilitation. Moreover, NBRC typically does not pay for vocational rehabilitation or training, although it can refer clients to such services, as it has agreed to do in this case.

9. The BHMA "Music in Careers" program is an out-of-state service. The evidence did not show that such a service is not available in California. Nor did the evidence show that NBRC funding of the program would be a cost-effective use of public resources.

LEGAL CONCLUSIONS

1. Regional centers may not expend funds for the purchase of services outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the client's individual program plan. Further, the purchase of out-of-state services is not authorized until the director determines the proposed service, or an appropriate alternative, is not available within the state. (Welf. & Inst. Code, § 4519, subd. (a).) Claimant's ILP assessment and vocational evaluation have not yet been completed. It may be that the appropriate services are available for claimant within the state.

2. Welfare and Institutions Code section 4646, subdivision (a), expresses the Legislature's intent that regional centers take into account the needs and preferences of the individual and the family, as well as promote community integration, independent, productive, and normal lives, and stable and healthy environments. The requirement that regional centers respect consumers' choices does not mean that developmentally disabled individuals and their parents are entitled to unfettered choice in deciding which services and supports are to be provided. Because regional centers are subject to budgetary and fiscal constraints, the Act requires that they implement services and supports in a cost-effective way. Services and supports must not only reflect the preferences and choices of the consumer, but also the cost-effective use of public resources. (Welf. & Inst. Code, § 4646.) Claimant did not demonstrate that NBRC's funding of the BHMA "Music in Careers" program would be a cost-effective use of public resources.

3. On the existing record, it has not been shown that NBRC is obliged to fund the out-of-state BHMA program.

ORDER

NBRC is not required to fund claimant's attendance at the BHMA "Music in Careers" program.

DATED: _____

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal the decision to a court of competent jurisdiction within 90 days of receiving notice of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)